

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant :	Gregory Joseph Badros et al.	Art Unit :	2161
Patent No. :	7,516,118	Examiner :	Etienne Pierre Leroux
Issue Date :	April 7, 2009	Conf. No. :	8962
Serial No. :	10/749,440		
Filed :	December 31, 2003		
Title :	METHODS AND SYSTEMS FOR ASSISTED NETWORK BROWSING "LINKTIPS"		

Commissioner for Patents
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APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)

Patentee hereby requests reconsideration of the Patent Term Adjustment (PTA) accorded the above-referenced patent. Reconsideration of the final PTA calculation to increase total PTA from 588 to 841 days, is respectfully requested.

REMARKS

"A Delays" are defined as delays by the U.S. Patent and Trademark Office (PTO) under 35 U.S.C. § 154(b)(1)(A), which guarantees prompt PTO response. "B Delays" are defined as delays by the PTO under 35 U.S.C. § 154(b)(1)(B), which guarantees no more than three year application pendency. To the extent that the periods of delay overlap, the period of any term adjustment shall not exceed the actual number of days the issuance of the patent was delayed. 35 U.S.C. § 154(b)(2)(A). As outlined in Wyeth et al. v. Jon W. Dudas (580 F. Supp. 2d 138; 88 USPQ 2d 1538), the only way that these periods of time can "overlap" is if they occur on the same day. If an "A delay" occurs on one calendar day and a "B delay" occurs on another calendar day, they do not overlap and 35 U.S.C. § 154(b)(2)(A) does not limit the extension to one day. Id.

The PTA for the instant patent, as currently calculated and shown on the face of the patent, apparently relies on the premise that the application was delayed under 35 U.S.C. § 154(b)(1)(B) *before* the initial three-year period expired. The Wyeth v. Dudas court determined that this construction cannot be squared with the language of 35 U.S.C. § 154(b)(1)(B), which applies "if the issue of an original patent is delayed due to the

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failure of the United States Patent and Trademark Office to issue a patent within 3 years.”

“B delay” begins only after the PTO has failed to issue a patent within three years, not before.

Id.

REVIEW OF PATENT TERM ADJUSTMENT CALCULATION

“A Delay”

A first PTO action was due on or before February 28, 2005 (the date that is fourteen months after December 31, 2003, the date on which the application was filed). The PTO mailed the first non-final Office Action on December 21, 2006, thereby according a PTO Delay of 661 days. Patentee does not dispute the PTO’s calculation for this “A Delay” from March 1, 2005 (the day after the date that is fourteen months after the date on which the application was filed), to December 21, 2006. See 37 C.F.R. §§ 1.702(a)(1) and 1.703(a)(1).

In view of the period of “A Delay” detailed above, the total “A Delay” for this patent should be calculated as 661 days.

“B Delay”

The period beginning on January 1, 2007 (the day after the date that is three years after December 31, 2003, the date on which the application was filed), and ending April 7, 2009 (the date the patent was issued), is 828 days in length.

“B Delay” may not include the number of days in the period beginning on the date on which a Request for Continued Examination was filed and ending on the date the patent was issued. In the present application, a Request for Continued Examination was filed on August 20, 2007, and the patent issued on April 7, 2009, resulting in a period of 596 days that must be excluded from the three year delay calculation. See 37 C.F.R. §§ 1.702(b)(1) and 1.703(b)(1).

In addition, “B Delay” may not include the number of days in the period beginning on the date on which a Notice of Appeal was filed and ending on the date of mailing of a Notice of Allowance. In the present application, no Notice of Appeal was filed.
See 37 C.F.R. §§ 1.702(b)(4) and 1.703(b)(4).

In view of the periods of "B Delay" detailed above, the total "B Delay" for this patent should be calculated as 232 days (i.e., 828 days minus 596 days). The PTO calculated 0 days of delay for issuance of a patent more than three years after filing. Patentee respectfully submits that the PTO's calculation of this "B Delay" is incorrect and that the correct PTO Delay for issuance beyond three years from filing is 232 days. See 37 C.F.R. §§ 1.702(b) and 1.703(b).

Overlap of "A Delay" and "B Delay"

As detailed above, "A Delay" accumulated during the following period:

March 1, 2005, to December 21, 2006.

As detailed above, "B Delay" accumulated during the following period:

January 1, 2007, to August 20, 2007.

As such, the periods of "A Delay" and "B Delay" do not overlap (i.e., occur on the same calendar day).

Applicant Delay

A reply to an Office Action was due on or before March 21, 2007 (the date that is three months after December 21, 2006, the date on which the Office Action was mailed). Patentee filed a response to the Office Action on April 23, 2007, thereby according an Applicant Delay of 33 days. Patentee does not dispute the PTO's calculation for this Applicant Delay from March 22, 2007 (the day after the date that is three months after the date on which the Office Action was mailed), to April 23, 2007. See 37 C.F.R. § 1.704(b).

Patentee filed a Request for Continued Examination on August 20, 2007, subsequent to a reply filed on August 3, 2007, thereby according an Applicant Delay of 17 days. In good faith and candor, Patentee respectfully submits that the calculated Applicant Delay of 0 days contains an error and that the correct calculation associated with this action is 17 days. See 37 C.F.R. § 1.704(c)(8).

The Office mailed an Examiner Interview Summary on October 14, 2008, in response to which Patentee filed a reply on November 17, 2008. Patentee an additional reply to the Examiner Interview Summary on November 19, 2008, and as such an Applicant Delay of 2 days

should be accorded for this supplemental reply. Patentee respectfully submits that the calculated Applicant Delay of 40 days contains an error and that the correct calculation associated with this action is 2 days. See 37 C.F.R. § 1.704(c)(8).

In view of the periods of Applicant Delay detailed above, the total Applicant Delay for this patent should be calculated as 52 days (i.e., the sum of 33 days, 17 days, and 2 days).

Terminal Disclaimer

This patent is not subject to a terminal disclaimer. Conclusion

In consideration of the events described above, Patentee believes the PTA calculation of 588 days is incorrect. As such, Patentee respectfully requests reconsideration of the PTA in the following manner:

- 1) Total PTO Delay should be calculated as 893 days (i.e., the sum of 661 days of "A Delay" and 232 days of "B Delay");
- 2) Total Applicant Delay should be calculated as 52 days (i.e., the sum of 33 days, 17 days, and 2 days); and
- 3) Total PTA should be calculated as 841 days.

The fee of \$200 required under 37 C.F.R. § 1.18(e) is being submitted herewith. Please apply any other required charges or credits to Deposit Account No. 06-1050, referencing attorney docket number 16113-1101001.

Respectfully submitted,

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